REGD. GOA - 5

Panaji, 1st May, 1975 (Vaisakha 11, 1897)

SERIES II No. 5

OFFICIAL GAZETTE

GOVERNMENT OF GOA, DAMAN AND DIU

GOVERNMENT OF GOA, DAMAN AND DIU

Secretariat Administration Department

Order

No. SAD/PER/528

Shri B. M. Masurkar, Law Secretary is granted earned leave for 34 days with effect from 5-5-75 to 7-6-75 with permission to prefix 4-5-1975 (Sunday) and suffix 8-6-1975 (Sunday).

The admissibility of leave has been certified by the Directorate of Accounts, Panaji.

Certified that Shri B. M. Masurkar would have continued to officiate in the same post but for his proceeding on leave.

During the leave period of Shri B. M. Masurkar, the Finance Secretary will look after the duties of Law Secretary.

By order and in the name of the Administrator of Goa, Daman and Diu.

M. K. Bhandare, Deputy Secretary (Appointments).

Panaji, 26th April, 1975.

Special Department

Order

No. 4-17-74-SPL

On the recommendation of the Government of India, Ministry of Home Affairs, New Delhi, the Administrator of Goa, Daman and Diu is pleased to relieve Smt. Vineeta Rai, I.A.S. of the post of Commissioner of Excise, Sales Tax, Entertainment Tax and Revenue and Taxes.

On expiry of her maternity leave Smt. Vineeta Rai is directed to report to the Chief Commissioner, Arunachal Pradesh for further posting.

By order and in the name of the Administrator of Goa, Daman and Diu.

M. K. Bhandare, Deputy Secretary (Appointments).

Panaji, 25th April, 1975.

Home Department (Transport and Accommodation)

Order

No. 25-62/71(T&A)

Government is pleased to direct that the validity of the existing Reciprocal Transport Agreement entered into between the Government of Maharashtra and the Administration of Goa, Daman and Diu which expires on 8th May, 1975 shall be extended for a period of four months or till such time as the renewed agreement is finalised, whichever is earlier.

By order and in the name of the Administrator of Goa, Daman and Diu.

G. M. Sardessai, Under Secretary (Home).

Panaji, 25th April, 1975.

Labour and Information Department

Order

No. LC/1/ID(28)/74

The following Award given by the Arbitrator, Shri M. G. Chitale on an industrial dispute between the Management of M/s. Chowgule and Co. Pvt. Ltd., Mormugao, Harbour Mormugao, Goa and their workmen employed by them, is hereby published as required vide provisions of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947).

P. Noronha, Under Secretary, Industries and Labour.

Panaji, 7th April, 1975.

Before Shri M. G. Chitale, Arbitrator

Arbitration

Between

M/s Chowgule & Co. Pvt. Ltd. Goa.

And

The workmen employed under them.

In the matter of payment of extra wages.

Appearances:

Mr. P. K. Rele, Advocate, with Mr. D. P. Sinha, Labour Officer, for the company.

Mr. H. K. Sowani, Advocate, with Mr. Mohan Nair, General Secretary, Goa Dock Labour Union, for the workmen.

AWARD

This is a reference under Section 10A of the Industrial Disputes Act, 1947, relating to the dispute between M/s. Chowgule & Co. Pvt. Ltd., Goa (hereinafer referred to as the employers) and their workmen represented by Goa Dock Labour Union (hereinafter referred to as the union). The agreement in this respect is published in the Official Gazette of the Government of Goa, Daman and Diu (Extraordinary) dated 25th April 1974. The dispute referred to is worded thus:

«Whether the action of the management of M/s Chowgule & Co. Pvt. Ltd., Mormugao Harbour (Goa), in discontinuing the payment of extra wages as laid down under the clause 8 of their certified standing orders in respect

of the workmen of their barges, with effect from 1st January 1972 is legal and justified?

If not, to what relief the workmen are entitled and from what date»?

2. In the statement of claim it is alleged that although it was incumbent upon the employers to pay extra wages to their barge crew as per clause No. 8 of the certified standing orders, the employers stopped payment thereof with effect from 1-1-1972. The correspondence that ensued thereafter between the employers and the union is referred to in the statement of claim. The statement of claim refers to the settlement dated 2-11-1971 and to the interpretations of Barua Award mutually agreed upon on 13-12-1971. These interpretations are in the nature of an annexure to the settlement dated 2-11-1971. The union in its statement of claim disputes that clause 1(b) of the settlement dated 2nd November 1971 replaces the extra wages contemplated by clause No. 8 of the standing orders. According to the union, there is nothing in the settlement dated 2-11-1971 to indicate that the extra wages contemplated by clause No. 8 were substituted by some provision in the said settlement. It is further pointed out that there is nothing in the interpretations-annexure to the settlement dated 2-11-1971 also to support the employers' contention that replacement of the extra wages mentioned in clause No. 8 of the standing orders was under contemplation of the parties while arriving at the settlement dated 2-11-1971, as well as the above-mentioned interpretations. The union further disputes that the trip allowance granted by Barua Award takes away the right of the workmen to receive extra wages for plying the barges during the period from 18.00 hours to 7.00 hours the next day as comtemplated by clause No. 8 of the standing orders. The statement of claim further contends that the employers cannot stop the payment envisaged by the standing orders without getting the standing orders amended by following proper procedure.

3. The union filed on 8th June 1974 supplementary statement of claim by which the union challenges the legality and validity of the settlement dated 2-11-1971 on the grounds viz (i) settlement dated 23-1-1969 was to be in force till 31-12-1971, hence settlement dated 2-11-1971 which is arrived at while earlier settlement was in force is invalid, and (ii) the settlement dated 2-11-1971 is not drawn up in Form H, and it was not jointly sent by the parties to the authorities concerned, as required by rules.

4. The employers by their written statement contend that the benefits enjoyed earlier by the workmen were substituted by clause 1(b) of the settlement dated 2-11-1971 read along with the interpretations — Annexure to the said settlement. According to the employers, clause 1(b) of the settlement dated 2-11-1971 uses the expression in lieu of all their existing benefits', which according to the employers replaces the extra wages provided by clause No. 8 of the standing orders. The written statement refers to the previous history of the dispute. According to the employers although payment under clause No. 8 of the standing orders was stopped since 1st January 1972, the union raised no dispute in that respect until it wrote the letter dated 1-11-1972. The employers maintained their stand indicated by their letter dated 24-11-1972-Annexure F to the statement of claim, and in their letter dated 4-2-1974 Annexure K to the statement of claim. The employers do not accept the union's interpretation relating to 31% boarding allowance mentioned in Barua's award, so also the employers dispute the correctness of the union's interpretation of clause 8 of the standing orders. The employers deny that the extra wages mentioned in clause 8 of the standing orders are overtime payment. According to them the extra wages mentioned in clause No. 8 of the standing orders take into consideration the fact that the workmen remain on barge round the clock to ply the barges, such plying being dependent on tides and requirement of the industry to work even at odd hours. On these allegation the employers contend that stopping payment of extra wages under clause No. 8 of the standing orders with effect from 1-1-1972 was pursuant to the settlement dated 2-11-1971 and is justified.

5. The employers submitted on 1st June 1974 supplementary written statement by which they contend that clause No. 8 of the standing orders provides for extra wages, extra wages is not one of the items covered by the Schedule to the Industrial Employment (Standing Orders) Act, 1946, hence clause No. 8 in so far as it provides extra wages is invalid, hence it was not necessary for the employers to apply for modification of clause 8 of the standing orders, in so far as it provides extra wages, after the settlement dated 2-11-1971. The employers further rely on clause 5 of the settlement dated 2-11-1971 to contend that the union agreed not to raise any dispute in respect of matters covered by the settlement dated 2-11-1971 which was to remain in force till 31-12-1974.

6. In reply to the supplementary statement of claim submitted by the union, which is mentioned above, the employers contend that the settlement dated 2-11-1971 is perfectly legal and valid. According to the employers this settlement dated 2-11-1971 is in Form H, it was jointly sent to the Labour Commissioner by the company and the union on 18-12-1971, and it was duly registered and given registration No. LC/54/71. The employers deny that the settlement does not satisfy the requirements of Industrial Disputes (Central) Rules, 1957.

7. It is necessary to state the facts which led to the present dispute. It is common ground that plying of barges depends upon the tides, hence the hours of duty of the barge crew cannot be confined to specific hours. It is also common ground that barges are plied even during the period between 18.00 hours to 7.00 hours the next day, as and when necessary depending upon the tides and other exigencies of the work. Service conditions of the barge-crew in Goa have been a subject-matter of dispute from 1963 onwards. In the meanwhile since 1963 onwards some settlements were arrived at. In spite of these settlements the dispute continued. Ultimately the Government of Goa, Daman and Diu made reference to the Industrial Tribunal vide Rerefrence No. (IT-GDD) 6 of 1967. The dispute referred to the Tribunal was worded thus:

«(i) Whether the barge crew employed by the barge owner mentioned in schedule 2 annexed hereunder are entitled to the benefits of interim relief and dearness allowance recommended by the Central Wage Board for Dock and Port workers as accepted by the Government of India in their Notification Nos. WB-21(13)/65, dated the 27th April 1965 and WB-21(13)/66, dated the 19th October 1966.

(ii) If not, to what relief the barge crew are entitled having due regard to the terms of the Settlement entered into by the barge owners with their workers during the years 1963-66 regarding wages, allowances and other service conditions.

(iii) To what relief, if any, barge crew are entitled».

Even while this reference was pending, agitation continued and the Government of Goa, Daman and Diu made another reference vide Reference (IT-GDD) No. 4 of 1970. The dispute referred to the Tribunal was worded thus:

«(i) What should be the wages and allowances of different categories of barge crew?

(ii) What should be the normal working hours of the barge crew and if overtime wages are payable at what rate the overtime wages should be paid to the barge crew?

(iii) what should be the working conditions of barge crew?»

The employers in this case were added as a party to the above two references, this was done with a view to bring about uniformity of service conditions of barge crew. Since the above two references could not be disposed of within a short time, the parties agreed to refer the dispute in the above-mentioned two references for arbitration by Mr. D. N. Barua. It must be mentioned here that the employers in this case i. e. M/s Chowgule & Co. Pvt. Ltd., were not a party to the arbitration proceedings before Mr. Barua gave his award which is published in Extraordinary Gazette No. 41, Series II dated 11-1-1971 of the Government of Goa, Daman and Diu. On 7th April 1971 the union made a statement before the Industrial Tribunal that no dispute existed between the Union and M/s Chowgule and Co. Pvt. Ltd., and in view of this statement the above-mentioned two references were disposed of by the Tribunal. The employers wrote to the union letter dated 8th October 1971 in which they referred to the union's above statement that no dispute existed. The employers further stated that the earlier settlement dated 23-1-1969 was due to expire on 31-12-1971, the employers would prefer its extension, but they would also welcome suggestions from the union for any changes, if desired. The union by its letter dated 14th October 1971 replied that the settlement dated 23-1-1969 was only in respect of wages and allowances, it did not cover other service conditions. The union suggested that the statement that no dispute existed was not an unqualified statement. It only meant that so long as settlement dated 23-1-1969 was in force, no dispute could be raised. In this letter the union asserted that service conditions of the employers' barge-crew were not the same as those enjoyed by the crew on barges of other barge-owners. The union stated that it expected the employers i.e. M/s Chowgule & Co. Pvt. Ltd. to implement Barua Award, but it was not done. The union demanded the same service conditions as were granted by Barua Award. The employers adopted the stand that the service conditions of

their barge-crew were not inferior to those of the barge-crew of other barge-owners. Thereafter the settlement dated 2-11-1971 along with the interpretations of Barua Award was signed by the union and the employers. The employers stopped payment of extra wages mentioned in clause No. 8 of the standing orders with effect from 1-1-1972, and that has given rise to the present dispute.

8. I shall first consider the preliminary point raised by Mr. Rele for the employers. Mr. Rele contends that clause 8 of the standing orders provides a certain wage-rate, certified standing orders can relate only to the items mentioned in the schedule to the Industrial Employment (Standing Orders) Act, 1946, there is no item in the schedule to the said Act under which such a wage-rate can be prescribed by the standing orders, hence clause 8 in so far as it fixes the wage-rate is invalid and inoperative. In support of this contention, reliance is placed on the decision of the Supreme Court in Rohtak and Hissar Districts Electric Supply Company Ltd. and another V. State of Utter Pradesh and others, reported in 1966(ii) L. L. J., 330. Reliance is placed on the following observations at page 337:

> «Then in regard to the matters which may not be covered by the standing orders, it is not possible to accept the argument that the draft standing orders can relate to matters outside the schedule. Take, for instance, the case of some of the draft standing orders which the appellant wanted to introduce; these had reference to the liability of employees for transfer from one branch to another and from one job to another at the discretion of the management. These two standing orders were included in the draft of the appellant as 10 and 11. These two provisions do not appear to fall under any of the items in the schedule; and so, the certifying authorities were quite justified in not including them in the certified standing orders».

In the above case it was argued before the Supreme Court that there was some sort of conflict between the Central Act and Utter Pradesh Act, but the Supreme Court held that there was no such conflict. The grievance in that case was against certain changes made by the Certifying Officer, which were confirmed by the Appellate Authority. The Supreme Court held that draft standing orders Nos. 10 and 11 which relate to the liability of the employees for transfer from one branch to another, did not fall under any of the items in the Schedule, hence the Supreme Court held the certifying authority was justified in not including them in the standing orders while certifying the same. This decision undoubtedly lays down that if there is any clause in the standing orders, which does not properly fall under any of the items in the Schedule, there can be no valid standing orders in respect of such a clause.

9. Reliance is also placed on the decision of the Supreme Court in Civil Appeal No. 2445 of 1968, dated July 18, 1969. This case also deals with the clause relating to the transfer. It was urged before the Supreme Court that the scheme of the Industrial Employment (Standing Orders) Act, 1946, is to show the minimum which has to be prescribed in an industrial establishment, but it does not exclude the extension otherwise. In other words, it was urged before the Supreme Court that standing orders can cover even items which are not covered by the Schedule to the said Act. This contention was rejected by the Supreme Court.

10. According to Mr. Rele clause 8 of the standing orders in this case in so far as it relates to fixing of wage-rate does not fall under any of the 11 items in the Schedule, hence the clause fixing the wage-rate is invalid as a certified standing order. On behalf of the union Mr. Sowani relies on item No. 2 in the Schedule. Item No. 2 reads thus:

> «Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage-rates».

Mr. Sowani relies on the decision of the Supreme Court in Bagalkot Cement Co. Ltd., V. Pathan (R.K.) and others, 1962, I-L.L.J., 203. In this case clause 7 of the draft standing orders, which was approved by the Certifying Authority and the Appellate Authority with some modification, provides for 10 festival holidays, 15 days' casual leave, 14 days' annual leave, etc. It was urged before the Supreme Court that item 5 in the Schedule does not include provision for the extent and quantum of leave and holidays, but it merely provides for the conditions and procedure to be adopted in applying for leave and holidays. In other words, it was urged that a standing order framed under item 5 cannot prescribe the quantum of leave and holidays, but it can only provide procedure to be adopted in applying for leave and holidays. This contention was rejected by the Supreme Court. Considering the objects of the Act and the preamble to the Act, along with the provisions of the Act, the Supreme Court held that it is not correct to say that the scope of the Schedule to that Act is intended to be very narrow. In that particular case the Supreme Court held that the expression «conditions of leave and holidays» should not be narrowly interpreted, but taking into account the object of the Act that expression should be held to include even prescribing the quantum of leave and holidays. This decision emphasises that the object of the Act is to require the employer to define formally the conditions of employment, i. e. to set out correctly and accurately the existing service conditions so as to make them properly known to the employees. The preamble to the Act does emphasize this aspect. The preamble reads thus:

> «Whereas it is expedient (to provide for defining with sufficient precision conditions of employment in industrial establishments in the State of Bombay, and for certain other matters:)»

The preamble makes it clear that standing orders are necessary to define with sufficient precision conditions of employment. In order to make the said conditions known to the workmen, as held by the Supreme Court in the case of Bagalkot Cement Co. Ltd., the standing orders will set out the existing service conditions in so far as they relate to the various items in the Schedule.

11. On behalf of the company Mr. Rele contends that Clause 8 of the standing orders in this case provides a wage--rate, and this according to Mr. Rele is beyond the scope of any of the items in the Schedule. This contention proceeds on the assumption that clause 8 prescribes -or provides a wage-rate. This assumption is not correct. It is common ground that the employees were paid at the rate mentioned in clause 8 even prior to the date on which draft standing orders were submitted for certification. If so, it is not correct to say that clause 8 prescribes or provides a wage--rate. In view of the admitted fact that the same wage-rate was paid to the employees even prior to the date on which draft standing orders were submitted for certification, it is absolutely reasonable to hold that what clause 8 does is to set out an existing wage-rate. If so, in my opinion it does properly fall under item 2 in the Schedule to the Industrial Employment (Standing Orders) Act, 1946.

12. Mr. Rele further urged that item 2 in the Schedule relates merely to the manner of intimation to workmen, clause 8 does not prescribe merely the manner of intimation to workmen, but it sets out the wage-rate, hence it does not fall under item 2. Here again the principle laid down by the Supreme Court that the wording of the item must not be narrowly construed has to be borne in mind. I have examined the various items in the certified standing orders, and this criticism will apply not only to clause 8, but several other clauses of the standing orders. In view of this, what is material for consideration is to see that the particular clause in the standing orders substantially deals with any of the items or topics mentioned in the Schedule. I do not think that merely because clause 8 does not in terms prescribe the manner of intimation, but merely sets out particular existing service condition, it can be said that it does not fall under item 2. I am, therefore, of the view that clause 8 does properly fall under item 2 of the Schedule to the Act. I am, therefore, unable to accept the contention that clause 8 of the certified standing orders is invalid in so far as it relates to extra wages referred to therein.

13. Mr. Rele further contends that in view of the settlement dated 2-11-1971 the present demand for extra wages as provided by standing order No. 8 is not tenable. There is no substance in this contention. Considering the statement of claim of the union and the written statement of the employers, it is obvious that the question for consideration in this case is one of interpretation of the settlement dated 2-11-1971 read along with the interpretation of Barua Award attached to the settlement as Annexure. The demand of the union is not a demand for something that is not provided by the settlement dated 2-11-1971. According to the union, under the settlement dated 2-11-1971 (considered with the interpretations) itself the employees are entitled to the extra wages contemplated by clause 8 of the standing orders, the employers have wrongly stopped the payment thereof, hence this dispute. The above contention of Mr. Rele is based on the wrong assumption that the demand of the employees viz. payment of extra wages under standing order No. 8 is extraneous to the said settlement. I, therefore, reject the contention that the demand in this case is not tenable in view of the settlement dated 2-11-1971.

14. I shall now deal with the union's contention that the settlement dated 2-11-1971 is not valid. The validity of this settlement is challenged on 2 grounds: (i) The earlier settlement dated 23-1-1969 was in operation until 31-12-1971, it was not terminated, hence the settlement dated 2-11-1971 which deals with matters covered by the earlier settlement dated 23-1-1969 is invalid. (ii) The settlement dated 2-11-1971 is not executed in such manner as is prescribed by Rule 58 of the Industrial Disputes (Central) Rules, 1957, it was not drawn up in Form H, and the settlement along with its annexure was not jointly sent by the parties to the authorities concerned, hence it is invalid. It is urged that during the subsistence of the earlier settlement dated 23-1-1969 there could be no industrial dispute, hence no valid settlement could be arrived at on 2-11-1971. It is true that the earlier settlement dated 23-1-1969 was to remain in operation till 31-12-1971. It would not, however, be correct to say that no fresh settlement could be arrived at by mutual consent during the period of the earlier settlement. In this respect reference may be made to the employers' letter dated 8th October, 1971 addressed to the Secretary of the union, which is annexure F to the written statement. This letter specifically refers to the earlier settlement dated 23-1-1969, and states that it is due to expire on 31-12-1971. This letter further mentions that although the employers would welcome extension of the settlement dated 23-1-1969, they would also welcome the union's suggestions, as the employers were keen to see that their bargemen having regard to the totality of the service conditions, as at present extended to them, are not placed in a less advantageuos position than bargemen employed by other barge owners. The union replied by its letter dated 14th October 1971 denying that the employers' bargemen were enjoying the same service conditions which bargemen of other employers enjoy under Barua award. The union did not in this letter contend that because of the earlier settlement dated 23-1-1969 no fresh settlement could be arrived at. After this correspondence the parties negotiated and arrived at the settlement dated 2-11-1971. The very fact that parties negotiated and arrived at the settlement dated 2-11-1971 clearly indicates that both the parties treated the earlier settlement dated 23-1-1969 as terminated with effect from 1-1-1972 when the fresh settlement of 2-11-1971 was given effect to. It is common ground that the settlement dated 2-11-1971 is already given effect to. In support of his contention Mr. Sowani for the union relies on the decision of the Supreme Court in Workmen of Delhi Cloth and General Mills Ltd. Vs. Delhi Cloth and General Mills Ltd. (1972, I-L.L.J., p. 99). This decision can be distinguished. In the case before the Supreme Court the Tribunal held that the dispute did not survive because of the settlement dated 9th June 1965, hence the State Government could not refer that dispute to the Tribunal. The settlement was challenged on the ground that it did not comply with the requirements of Rule 58. On behalf of the employers i. e. Delhi Cloth and General Mills Ltd., it was urged that the management and the union were free to arrive at a settlement of their dispute, and if they agreed to do so, that agreement could not but be held to be binding. This contention was rejected by the Supreme Court on the ground that when a dispute is referred to the Concilliation Officer, the parties cannot claim absolute freedom of contract to arrive at a settlement in all respects binding on the workmen. In the present case at the material time no concilliation proceedings were pending, hence the parties were free to arrive at a settlement which would take effect on the expiry of the earlier settlement.

15. I have examined the form of the settlement dated 2-11-1971. It substantially complies with Form H, and such substantial compliance is enough, particularly when no concilliation proceedings were pending. With regard to the objection that it was not sent for registration, I may mention that the employers have produced copy of the letter dated 18th December 1971, jointly signed by the parties, addressed to the Labour Commissioner with the request that the settlement was forwarded to be duly dealt with under the I. D. Act with intimation to the parties. The Labour Commissioner by his letter dated 20th December 1971 intimated to the parties that the settlement was registered, registration number being LC/54/71. In view of this letter there is no substance in the contention that the settlement was not forwarded to the authorities concerned, as required by the law. In fact after the above letter was produced, the contention was not seriously pressed by Mr. Sowani.

16. Coming to the merits of the dispute, it is urged by Mr. Sowani for the union that the settlement dated 2-11-1971 was intended to improve the service conditions, the Union could not possibly intend to curtail the rights already conferred on the employees as disclosed by the standing orders. He further submits that there is nothing in the settlement dated 2-11-1971, nor in the interpretations which are annexure to the said settlement, to indicate that the extra wages contemplated by standing order No. 8 were given up. Mr. Rele on behalf of the employers on the other hand contends that the settlement dated 2-11-1971 makes it clear that the existing basic scales of pay for the barge crew were maintained, and in lieu of all other existing benefits the benefits mentioned in clause 1(b) of the settlement were awarded to the employees. According to Mr. Rele, the extra wages mentioned in standing order No. 8 are really overtime wages, they constitute a 'benefit', and are not a part of the basic pay. Mr. Rele strongly relies on the expression 'in lieu of all their existing benefits' to contend that the benefit in the form of extra wages mentioned in standing order No. 8 was substituted by the benefits mentioned in clause 1(b) of the settlement dated 2-11-1971. While considering these contentions it would be necessary to determine the nature of the extra wages mentioned in standing order No. 8. Standing order No. 8 reads thus:

> «The employees of the Barges Establishment shall not leave the barges on which they are posted without permission from competent authorities. The sailings of the barges being dependent on tides, the crew of the barges plying during the period from 18.00 hours to 07.00 hours on the following day will be paid extra wages at 25% of the gross salary for such working on week days and at 50% of the gross salary for such working on holidays and weekly off days».

Mr. Sowani for the union strongly relies on the expression 'extra wages' and contends that what is mentioned as extra wages in clause 8 of the standing orders is a part of the basic pay. Mr. Rele for the employers on the other hand submits that considering the wording of clause 8 of the standing orders as a whole, it is clear that the working hours upto 18.00 hours i. e. 6.00 p. m. were considered to be normal working hours, and if the employees on the barges work during the period from 18.00 hours to 07.00 hours the next day, it would be considered as working overtime. Although the wording of clause 8 is not very clear and specific, Mr. Rele's contention that clause 8 mentions payment only for actual plying hours during the period from 18.00 hours to 07.00 hours the next day, and not for the whole period between 18.00 hours and 07.00 hours. the next day, whether the barge is plied or not, seems to be correct. In this respect I may refer to the relevant portion of clause VI(F) of the settlement dated 23-1-1969 which reads thus:

> «Clause VI(F) ... The pattern of working as existing upto 30th December 1968, will be maintained including the pattern of working between the hours of 18.00 and 07.00 of the following day, for which extra payment is provided for under clause 8 of the standing orders will be made with the following proviso:
>
> '(G) That besides the hours of plying as calculated at present, the following hours for loading will also be calculated in computing the extra wages provided the loading is actually done between the hours of 18.00 and 07.00 hours of the following day:
>
> | | | |
> |---|---|---|
> | 400 and 700 tonner barges | Hrs. 2 | Mts. 00 |
> | Below 400 tonners | » | Mts. 00 |
>
> Where only part of the loading falls between hours of 18.00 to 07.00 hours of the following day, the actual time in multiples of every half an hour will be computed. No overtime will be calculated for calculation of extra wages.
>
> (H) This agreement will remain in force for the period of 3 years from 1-1-1969 without prejudice to statutory obligations imposed if any in future and no dispute will be raised in respect of the matters contained herein».

The above-quoted clause makes it clear that under clause 8 of the standing orders extra wages were paid only for the hours for which the barges were actually plied, and not for the whole period between 18.00 hours and 07.00 hours the next day. Thus it is in my opinion clear that the nature of the 'extra wages' mentioned in clause 8 of the standing orders are in the nature of overtime wages depending upon the extent of the overtime work. If so, they cannot be said to form a part of the basic pay.

17. The question for consideration is whether there is anything in the settlement dated 2-11-1971 and its annexure i. e. interpretations to indicate that the parties intended to continue the payment as contemplated by clause No. 8 of the standing orders. For this purpose the terms of the settlement dated 2-11-1971 with its annexure i. e. interpretations will have to be considered. Before I go to the actual terms of the settlement, I would like to refer to the correspondence leading to that settlement. In their letter dated 8th October 1971 addressed to the General Secretary of the union employers stated:

> «While we would welcome its extension, we would appreciate any suggestions from you for our consideration as we are keen to see that our bargemen, having regard to the totality of the service conditions at present extended to them, are not placed in a less advantageous position than bargemen employed by other bargeowners».

Thus the employers made it clear that they were willing to offer to their employees service conditions which would be not less advantageous than those enjoyed by bargemen employed by other bargeowners.

18. The union in its reply dated 14th October 1971 stated:

> «4. You have your own views about the service conditions of your barge crew and you may be thinking that your barge crew is not placed in a less advantageous position than the barge crew employed by other bargeowners. This statement of yours is further an insult on injury. We had raised the dispute regarding the gratuity before the competent authority and it is on record that you have opposed the same. The question of variable dearness allowance, city compensatory allowance, house rent allowance, education/tuition allowance, mid-stream allowance, washing allowance, subsistence allowance, travelling allowance, dust allowance, T. B. allowance, trip allowance, etc. are not paid to your barge crew which fact you cannot deny.
>
> 6. We thought wise counsel would prevail upon you after the award of Shri D. N. Barua in the matter of arbitration in the dispute between the 19 bargeowners of Goa and this Union published in the Government of Goa, Daman and Diu extraordinary gazette No. 41, Series II, dated 11-1-1971 to voluntarily accept the same benefits and conditions of service as extended to all the barge crew working in the Port of Mormugao. Contrary to our expectations, you have chosen to contest our contention on some ground or the other ... We are enclosing herewith a true copy of the statement of claim which we had submitted before Shri D. N. Barua, Hon'ble Arbitrator, who gave an award on the same dispute which was pending before the Industrial Tribunal, which is self-explanatory and we demand the same for your barge crew also».

The above-quoted portion of the union's letter makes it clear that the union felt that the service conditions provided by Barua award were not granted by the employers and the union called upon the employers to implement Barua award. even though the employers were not a party to that award. Thus it is clear that the union wanted the employers to implement the provisions of the Barua award and bring their employees on par with employees of other bargeowners. The settlement dated 2-11-1971 was arrived at after this correspondence. Thus it is clear that the parties started negotiations with a view to see that the employers i. e. M/s Chowgule & Co. Pvt. Ltd. implemented the provisions of Barua award and brought their barge crew on par with the barge crew of other bargeowners. It is with this background that the terms of the settlement dated 2-11-1971 will have to be interpreted.

19. The preamble to the settlement dated 2-11-1971 is also important. Relevant portion of that preamble reads thus:

> «After prolonged discussions between the parties in respect of the union's demand for implementation of Shri Barua's award and continuation of the present agreement which is in force upto 31-12-1971 both the parties have agreed as follows:»

This preamble also makes it clear that the negotiations were held with a view to see that the settlement to be arrived at implements Barua award. It appears that during negotiations some difficulty was felt about the interpretation of certain clauses of Barua award, hence the parties discussed further the terms of Barua award and noted their agreed interpretation which forms the annexure to the settlement dated 2-11-1971. Clause 1(a) of the settlement dated 2-11-1971 retains the existing basic scales of pay. These scales are mentioned in the annexure styled as interpretations. On behalf of the employers affidavit of their Labour Officer D. P. Sinha is produced. He has set out in the annexure to the affidavit the scales that existed prior to 1-1-1972. They are the same as set out in the interpretations.

20. Clause 1(b) of the settlement dated 2-11-1971 reads thus:

> «Introduce in lieu of all their existing benefits the following benefits on the pattern of Shri Barua award as per the interpretations agreed between the parties and annexed herewith».

The various benefits numbering 15 are set out below the above clause. It is important to note that in this list of benefits the 'existing allowance' that was paid prior to 1-1-1972 does not find place. So also there is no specific reference to the 'extra wages' mentioned in clause 8 of the standing orders. It is urged on behalf of the union that since there is nothing to indicate in the settlement dated 2-11-1971 along with the interpretation that the parties intended to stop payment of extra wages mentioned in clause 8 of the standing orders, it must be assumed that the parties intended to continue it. As against that, Mr. Rele for the employers contents that in view of the wording of Clause 1(b) of the settlement it is abundantly clear that the benefits numbering 15 set out in that clause were provided in lieu of all the existing benefits. He further contends that if the parties intended to continue the extra wages mentioned in clause 8 of the standing orders, they would have specifically provided for the same, as was done in the settlement dated 23-1-1969. According to Mr. Rele, the expression 'in lieu of all the existing benefits' excludes payment of extra wages mentioned in clause 8 of the standing orders. The fact that the settlement dated 2-11-1971 and its annexure i.e. interpretations are silent as to what was to happen to the payment of extra wages mentioned in clause 8 of the standing orders gives rise to the above-mentioned contentions on either side. Thus the fact that the settlement dated 2-11-1961 and the interpretations are silent on the question of payment of extra wages mentioned in clause 8 of the standing orders proves to be a double-edged weapon.

21. It is an established principle of construction that a document must primarily be construed on the terms thereof, and if there is any ambiguous term, or if the document is silent on any point, in that case only the circumstances in which the document came to be executed can be examined. In this case the settlement being silent on the point in dispute, while interpreting the terms of the settlement it is necessary to examine the circumstances in which the document came to be executed. As already pointed out, the dispute between the bargeowners and the barge employees was a long standing dispute, Government of Goa, Daman and Diu desired that the service conditions of barge crew should be uniform, hence two references were made to the Tribunal under Industrial Disputes Act, but while these references were pending, the parties concerned, except the employers in this case, referred the entire dispute for arbitration by Mr. Barua. Mr. Barua gave his award on 29th December 1970. Thereafter since October 1971 the union demanded that the employers i.e. M/s Chowgule & Co. Pvt. Ltd. should implement Barua award and fall in line with other bargeowners. This is clear from the correspondence which is referred to above. In view of this, it will be necessary to examine the contents of Barua award to find out what Mr. Barua awarded for the work that is done by the barge crew during the period from 18.00 hours to 7.00 hours the next day. The questions referred to the Arbitrator, Mr. Barua, were as follows:

> «(1) What should be the wages and allowances of different categories of barge crew considering the previous settlements signed with the different Unions including the Goa Dock Labour Union from 1963 onwards till date?
>
> (2) What should be the normal complement of barge crew on each barge?
>
> (3) What should be the working conditions of the barge crew?
>
> (4) what should be the normal working hours of the barge crew and if overtime wages are payable, at what rate the overtime wages shall be paid to the barge crew?
>
> (5) The date from which the award of the arbitration shall be made applicable?

Thus it is clear that determination of normal working hours for the barge crew and overtime wages were among the points of dispute referred to the arbitrator. In para 96 of the award the learned Arbitrator observes:

> «In framing the award I have taken into account the element of 24 hours presence or round the clock presence on the barges. The additional compensation aspect, over and above the proposed pay scales will be discussed in the paragraph relating to the overtime allowance. The scales of pay framed by me will also take this aspect into consideration as the bargemen cannot be compared with any indstrial workers or with the seamen whose nature of duties are different in many respects. I have also given consideration to the wishes of the employers to maintain the wage differential between the three categories of companies excepting for the khalasis whose pay at the minimum is same for all the companies. I feel that there is no justification for different pay scales at least to start within the lowest level and there should be uniformity at the minimum of pay while the maximum of the scale should be within the paying capacity of the particular company».

With these observations the learned Arbitrator fixed the pay scales. The above-quoted observations make it clear that the important element which gives rise to the present dispute viz. 24 hours presence or round the clock presence on the barge was taken into account by the learned Arbitrator while fixing the pay scales. It would also be necessary to refer to the trip allowance granted by the learned Arbitrator — see para 119 of the award. Considering the award as a whole and the nature of the trip allowance awarded, it is in my opinion clear that this trip allowance was awarded by way of incentive. The learned Arbitrator in para 139 of his award observes:

> «For the employees, for working 24 hours weightage has been given in addition to the basic pay ..... In this context, revision of the pay scales, dearness allowance, etc. has to be read in this epilogue to the Part-I Award of the dispute».

In Part-III of the Award the learned Arbitrator deals with the question: 'What should be the working conditions of the barge crew?' He then deals with various service conditions of the barge crew. In Part-IV of the Award the learned Arbitrator deals with the question: 'What should be the normal conditions of working hours of the barge crew, if O.T. wages are payable to the barge crew'. The discussion on this question makes it clear that the union contended before the Arbitrator that the normal working hours for barge crew should be 8 hours from 07.00 hours to 15.00 hours, the work during the rest of the period may be treated as overtime work, and the barge crew should be paid at 1½ times the usual rate of wages. While dealing with this contention the learned Arbitrator observes:

> «Shri Mohan Nair on behalf of the employees argued that the payment of overtime should be made at 1½ times the usual rate of wages. He also referred to the method of working of overtime allowance paid by M/s Chowgule that is inapplicable. From the evidence brought before me, it has been found that operation of the barge depends on so many factors which have been discussed earlier. It is humanly impossible for the employers to control the operation of the barge limited to daylight only like other industrial workers. If it is decided to impose any restrictions of hours it will be a major departure from the existing practice and it will upset the entire trading pattern of iron ore industries. The ships on the harbour will have to be loaded at the conveniences of the shipping concerns which is neither in the hands of the employer of the barge owners. It is impracticable to divide the hours into duty hours and non-duty hours involved in the operation. It is precisely under these circumstances that the M.M.T.C. has given certain weightage to wage scales to compensate for the work round the clock».

The above-quoted observations make it clear that the learned Arbitrator found it impracticable to restrict the working hours of the barge crew to particular 8 hours, hence while fixing the pay scales he gave weightage taking into account the fact that the barge crew have to remain on board round the clock. The most important paragraphs of the award for the purpose of the present dispute are paragraphs 186 and 187 which read thus:

> «186. My views on the subject are already expressed in para 184 and Shri Nair in his oral submission gave stress on effect of compensation for the loss of hours of rest. He also understands the implication and the difficulties in splitting up of the loss of work and normal hours of work. If I remember correctly I may refer back to para 6 of the submission in which the dispute of 1964 was due to the submission of fresh charter of demand and also resorted to 8 hours work and mutual agreement was also signed, subsequently after receiving certain amount. The system of work was not altered. The interpretation shown in para 7 that the Union understood that the workmen would remain on the barge round the clock but would not work does not seem to be acceptable. While fixing the basic wage scales itself I have taken into account the arduous nature of work or the nature of employment round the clock. According to the evidence that are on record the overtime allowances paid by certain companies were not suitable in principle for this case. In the M.M.T.C's agreement produced by the employees this problem has been dealt with. Shri Nair also is in favour of following such a system of compensation as is applicable to the M.M.T.C. employees. The representative of the employer also agreed with such proposition. In view of this my award is as under:
>
> 187. The bargemen will drew 31% (thirty one percent) of the basic pay minimum of Rs. 45/- as the compensatory allowances an additional allowance for loss of hours of rest for being on board. The compensatory allowance may be termed as boarding allowance or compensatory allowance. No Dearness Allowance will be admissible on this account. But it will be counted for the purpose of Bonus and Provident Fund and leave benefits».

I have referred to the material paragraphs from Mr. Barua's award which have bearing on the dispute in the present case. Considering paragraphs 96, 184, 186 and 187 of that award together, it is in my opinion clear that the learned Arbitrator found it extremely difficult to ascertain or calculate the exact working hours during the period from 18.00 hours to 7.00 hours the next day — the period mentioned in clause 8 of the standing orders. In view of this, he held that although barge crew were expected to work even during the period from 18.00 hours to 07.00 hours the next day, the work was not continuous, the said period included even the period of rest, though it was occasionally disturbed by exigencies of work. From the observations of the learned Arbitrator referred to above, it is clear that higher pay scales were fixed taking into account the fact that the barge crew are required to remain on board round the clock i. e. for all the 24 hours because of the peculiar nature of the work of the barge crew. Thus it is clear that question of overtime work was taken into account while fixing the pay scales. The nature of the work of the barge crew involved another element viz. loss of some hours of rest, For that compensation was allowed by the allowance termed as 'Boarding Allowance or Compensatory Allowance'. On the terms of Barua award it is in my opinion clear that the learned Arbitrator did accept the union's contention that some overtime work was there, although the exact hours of overtime work could not be determined. The learned Arbitrator also took into account the fact that the hours of work, which depended on tides etc. were uncertain, and that resulted into loss of some hours of rest. Compensation for overtime work was granted by fixing higher pay scales taking into account the presence of the barge crew on the barge round the clock, and loss of some of the hours of rest was compensated by boarding allowance or compensatory allowance.

22. Clause 8 of the standing orders is quoted above in para 16. On the wording of that clause and other relevant facts admitted or proved it is clear that the extra wages referred to in that clause provided remuneration for the actual working hours during the period from 18.00 hours to 07.00 hours the next day. This clause did not provide any compensation for loss of some hours of rest on account of the uncertainty of the working hours. It is urged by Mr. Rele for the employers that the fact that the barge crew have to work for some time even during the period from 18.00 hours to 07.00 hours the next day is taken into account while fixing the pay scales by the learned Arbitrator Mr. Barua, and to remunerate the barge crew for this he has given weightage i. e. he has provided remuneration for work during the said period. There is considerable force in this contention. As against that, it is urged by Mr. Sowani for the union that Mr. Barua's award does not provide remuneration for the extra work done by the barge crew

during the period from 18.00 hours to 07.00 hours the next day. I am unable to accept Mr. Sowani's contention. As pointed out above, the questions relating to normal working hours and overtime wages, were before the Arbitrator for decision, and he has dealt with them as pointed out above. It is extremely difficult to assume that the learned Arbitrator did not provide any overtime wages, although the question was specifically referred to him for decision. He has in my view dealt with the question of overtime wages for the work done during the period from 18.00 hours to 07.00 hours the next day in the manner indicated above. I am, therefore, unable to accept Mr. Sowani's contention that Barua Award does not provide payment for the work done by the barge crew during the period from 18.00 hours to 07.00 hours the next day.

23. As stated above, the demand of the union was that the employers i.e. M/s. Chowgule & Co. Pvt. Ltd. should implement the provisions of the Barua Award. The correspondence makes this clear. The parties started negotiating upon this demand and arrived at the settlement dated 2-11-1971, they took care to have agreed interpretations of the relevant clauses of Barua award which the union desired the employers to implement. The employers' letter dated 8th October 1971 and the union's reply dated 14th October 1971 referred to above leave no doubt whatever that the anxiety of the union was to see that the barge crew of the employers i.e. M/s. Chowgule & Co. Pvt. Ltd. enjoyed the same service conditions which were granted to the barge crew of the other bargeowners by Barua award. It is urged on behalf of the union that M/s. Chowgule & Co. Pvt. Ltd. was not a party to the arbitration proceedings before Mr. Barua, hence there was no occasion to consider the service conditions including pay scales and extra wages, of M/s. Chowgule & Co. Pvt. Ltd. It is correct that the service conditions of M/s Chowgule & Co. Pvt. Ltd., could not be the subject-matter of discussion and decision in the Arbitration proceedings before Mr. Barua, although the parties could refer to these service conditions, if it suited them for the purpose of applying the principle industry-cum-region basis. In any case there is no doubt whatever that while carrying on negotiations which resulted into the settlement dated 2-11-1971 the object was to secure for the barge crew of M/s Chowgule & Co. Pvt. Ltd. the same service conditions which were awarded to the barge crew of other bargeowners by Barua award, although it may be that the union did not intend to forego any of the existing advantages and wanted to have further improvement of service conditions. The preamble to the settlement dated 2-11-1971, referred to above, also makes it clear that implementation of Barua award was the demand and, over that demand negotiations went on. It is urged on behalf of the union that the preamble further refers to the continuation of the then existing settlement which was to remain in force till 31-12-1971, hence it is clear that the employees did not intend to give up any existing advantage. That undoubtedly would be so. From that, however, it does not follow that in the settlement for which negotiations were carried on with the object indicated by the preamble to the settlement, there would be only additions without in any way modifying or substituting the existing service conditions and/or clauses of the earlier settlement which was then in force. This is in my opinion clear from the expression 'in lieu of all their existing benefits' appearing in clause 1(b) of the settlement dated 2-11-1971. For example, dearness allowance and variable dearness allowance are the first two items in clause 1(b). By the settlement dated 2-11-1971 the parties agreed that the dearness allowances and variable dearness allowance should be paid as per Barua Award in substitution of the ad-hoc allowance and variable dearness allowance paid prior to the said settlement. Along with the affidavit of D. P. Sinha, the employers' Labour Officer, statement showing the total wage packet of some employees prior to the settlement dated 2-11-1971, and that since 1-1-1972 when the said settlement came into operation is produced. That statement shows that although variable dearness allowance substantially remained the same there was considerable increase in ad-hoc allowance which was paid in place of dearness allowance. Clause 1(b) of the settlement dated 2-11-1971 specifically mentions that the existing basic scales of pay for the barge crew shall continue. Along with the affidavit of D. P. Sinha, employers' Labour Officer, statement showing the pay scales which were in force at the time the settlement dated 2-11-1971 was arrived at are set out. Comparing these pay scales with those awarded by Barua Award it is clear that the pay scales of M/s Chowgule & Co. Pvt. Ltd. were better in most of the cases than those granted by Barua Award. The union has not produced any material to show that the pay scales of M/s Chowgule & Co. Pvt. Ltd. were less than those granted by Barua Award. Moreover there is no doubt that if pay scales of M/s Chowgule & Co. Pvt. Ltd. were less than those granted by Barua Award, they (pay scales) would have been revised while arriving at the settlement dated 2-11-1971. So also it would be reasonable to assume that if the extra wages mentioned in clause 8 of the standing orders were part of basic pay, it would have been so mentioned specifically while arriving at the settlement dated 2-11-1971. The very wording of clause 8 of the standing orders indicates that it is an extra payment i.e. payment besides the regular scales. The very expression 'extra wages' implies this. Moreover considering the wording of clause 8 of the standing orders as a whole there can be no doubt that what is mentioned in that clause as extra wages is payment taking into account the fact that the barge crew were required to be on board even during the period from 18.00 hours to 07.00 hours the next day. Thus the 'extra wages' mentioned in clause 8 of the standing orders are in the nature of a 'benefit', and not a part of the regular pay scales.

24. On behalf of the employers affidavit of their Labour Officer D. P. Sinha is produced. In this affidavit it is stated that in the case of other bargeowners i.e. bargeowners other than the employers in this case, the service conditions of the barge crew are governed entirely by Barua Award read with the settlement dated 10-9-1971, and no benefit outside Barua Award is being given by any one of them, particularly in respect of working between 18 hours and 7.00 hours the next day. It is further stated that pursuant to the settlement dated 2-11-1971 the employers i.e. M/s Chowgule & Co. Pvt. Ltd. have also implemented the benefits granted to the barge crew under Barua Award and the settlement dated 10-9-1971. It is further stated that on 2-11-1971 when settlement was arrived at between the employers i.e. M/s Chowgule & Co. Pvt. Ltd. and the union other bargeowners did not pay any extra wages/allowance/compensation over and above 31% compensatory allowance or boarding allowance mentioned in para 187 of Barua Award for working between 18.00 hours and 07.00 hours the next day, nor for any other period. According to Sinha, during the negotiations which resulted into the settlement dated 2-11-1971 the understanding was that since the union insisted on implementation of Barua Award in toto, the extra wages mentioned in clause 8 of the standing orders would be discontinued in consideration of the introduction of Trip Allowance and 31% compensatory allowance. According to Sinha, this understanding is recorded in the employers' letter dated 30-10-1971 addressed to the Labour Commissioner, copy of which is attached as Annexure B to the affidavit. This letter itself gives no indication. A list of concessions demanded by the union is, however, attached to this letter. Below this list there is a remark which reads thus: 'The union is prepared to set out the actual overtime paid by the company from 1-1-1969 against Item No. 9 and No. 17'. Item No. 9 is trip allowance and item No. 17 is compensatory allowance alias boarding allowance'. This remark is significant. This remark indicates that what was paid by the employers i.e. M/s Chowgule & Co. Pvt. Ltd. as overtime wages i.e. extra wages under clause 8 of the standing orders was to be set off against what was payable by way of trip allowance and compensatory alias boarding allowance granted by Barua Award. This remark does lend some support to the employers' contention that the nature of trip allowance and compensatory allowance alias boarding allowance was the same as that of overtime wages i.e. extra wages mentioned in clause 8 of the standing orders. The above remark indicates the union's understanding as to the nature of the trip allowance and boarding allowance alias compensatory allowance awarded by Mr. Barua, and also the attitude taken up by the union in October 1971.

25. Mohan Nair, General Secretary of the union, has filed affidavit in reply to Sinha's affidavit mentioned above. In this affidavit it is stated that M/s Chowgule & Co. Pvt. Ltd. have been always treated differently from other bargeowners, their method of work has been quite different, hence conditions of service of their barge crew have always been different. Along with the affidavit a copy of the minutes of discussion held at Delhi on 4-4-1966 is produced. The discussion was over the question whether the barge crew could be classified as port and dock workers, whether the terms of reference of the Wage Board for Port and Dock Workers covered the barge crew, and whether the wage increases given in September-October 1964 to the barge crew should absorb any part or whole of the interim increase given as the result of the interim award of the Wage Board. It is pointed out that M/s Chowgule & Co. Pvt. Ltd. made it clear that the conclu-

sions at the said discussion did not apply to them, as conditions of working of their employees were different. Considering these minutes as a whole, it is clear that the main question for discussion was whether the barge crew could be considered to be 'port and dock workers'. M/s Chowgule & Co. Pvt. Ltd. insisted that their barge crew could not be classified as Port and Dock Workers, their conditions of work being different. In his affidavit Mohan Nair points out that the barge crew of Chowgules' have to unload cargo in the mechanical ore handling plant of the company and the plying of their barges is, therefore, regular and without any interruption. In the case of other bargeowners the plying of barges depends upon the availability of steamers at the port and also on the labour supplied by Mormugao Dock Labour Board for discharging the cargo by manual unloading. According to Mohan Nair unloading operation at the mechanical ore handling plant takes half an hour for small barges and one to two hours for medium and big size barges. In the case of other bargeowners unloading operation requires 4/5 hours for barges of medium size, and even 8 hours in the case of barges of large size (see para 3 of the affidavit). The difference pointed out would result into Chowgules' barges doing more trips. This aspect is covered by the trip allowance granted by Barua award. Moreover it is difficult to assume that this aspect was not taken into account while arriving at the settlement dated 2-11-1971. It is further stated in Mohan Nair's affidavit that M/s Chowgule & Co. Pvt. Ltd. was not a party to the arbitration proceedings before Mr. Barua, hence the adequacy of the service conditions of the barge crew of that company could not be considered. It is further stated that there was no intention on the part of the union to bring about uniformity of service conditions between M/s. Chowgule & Co. Pvt. Ltd. and other bargeowners. Whatever may be the union's intention, there can be no doubt that the Government of Goa, Daman and Diu made the abovementioned two references with a view to bring about uniformity of service conditions amongst the employees of the various bargeowners. It is stated in the affidavit that the union wanted to secure for the barge crew of M/s. Chowgule & Co. Pvt. Ltd. those benefits granted by Mr. Barua, which were not granted by M/s. Chowgule & Co. Pvt. Ltd. According to Mohan Nair, extra wages mentioned in clause 8 of the standing orders are covered by clause 1(a) of the settlement dated 2-11-1971. Clause 1(a) reads thus:

> «1. It is hereby agreed that M/s. Chowgule & Co. Pvt. Ltd. will, with effect from 1-1-1972,
>
> (a) retain their existing basic scales of pay for the barge crew in their service and will extend them to those on daily wages and also to others who join service later on. There will be no question of any fitment into scales».

On the wording of clause 1(a) above it is clear that parties agreed that existing basic scales of pay should be continued. Thus if the extra wages paid under clause 8 of the standing orders can be considered to be a part of basic pay scales, there is no doubt that it would be continued by the settlement dated 2-11-1971. But as pointed out above, the extra wages in the said clause cannot be said to be a part of the basic scale of pay, but these extra wages furnish remuneration for the actual work done by the barge crew during the period from 18.00 hours to 07.00 hours the next day. In my view these extra wages are in the nature of remuneration for overtime work, they do not form part of the basic scale of pay. I am, therefore, unable to accept the contention that extra wages mentioned in clause 8 of the standing orders are covered by clause 1(a) of the settlement dated 2-11-1971.

26. It is further stated in Mohan Nair's affidavit that extra wages in clause 8 of the standing orders, even assuming that they fall under clause 1(b) of the settlement, are not referred to in the 15 items set out in clause 1(b), hence they are preserved. There is no substance in this contention. Clause 1(b) sets out 15 items which were to substitute all the existing benefits, if so the extra wages would not find place among items in clause 1(b) if extra wages were to be substituted by any or some of the 15 items mentioned in clause (b). I may point out here that the settlement dated 23-1-1969, Annexure C to the employers' written statement, specifically refers to the extra wages mentioned in clause 8 of the standing orders. It would thus be reasonable to assume that parties would have specifically referred to the extra wages in clause 8 of the standing orders if the parties intended to continue payment of those extra wages while arriving at the settlement dated 2-11-1971.

27. Annexure B to Mohan Nair's affidavit points out the additional benefits granted to the barge crew by bargeowners other than Chowgules over and above the benefits conferred by Barua Award. On behalf of the employers it is pointed out that these benefits were conferred subsequent to 2-11-1971 the date of the settlement mentioned above. It is not pointed out by the union that these benefits mentioned in Annexure B to Mohan Nair's affidavit were in existence when the settlement dated 2-11-1971 was arrived at. Subsequent benefits can have no bearing on the question before me.

28. Annexure C to Mohan Nair's affidavit points out the distinction between the service conditions of Chowgules and those of other bargeowners. It is pointed out that the Captains and Drivers of D Grade are granted a pay scale by Chowgules which is lower than that granted by Barua Award. It is, however, important to note that the pay scales of Chowgules for other categories of Captains and Drivers are higher than those granted by Barua Award, as can be seen from the pay scales set out in Annexure D to the affidavit of D. P. Sinha, employers' Labour Officer. The mere fact that Chowgule's pay scale of one category is lower than that granted by Barua Award would not by itself support the union's contention. After all in a settlement there is mutual give and take, and the very fact that the union did not seek improvement of the existing pay scales of Chowgules indicates that they were satisfactory even to the union. The same would be correct about other categories such as Sukanis/Asstt. Drivers etc., I have compared the pay scales of Chowgules with the pay scales granted by Barua Award. I do not think that the pay scales of Chowgules are on the whole lower than those granted by Barua Award. If in the case of Chowgules the starting basic pay is the same or slightly lower, the rate of increment is better. Thus there is nothing to indicate that the pay scales of Chowgules are less advantageous than those granted by Barua Award.

29. As stated earlier, the question that arises in this case is one of interpretation of the settlement dated 2-11-1971 read with interpretations mentioned above. While interpreting a settlement it is not open to a Court or Arbitrator to examine the motive of the parties in arriving at a particular settlement. As stated above, if a particular clause or term of a settlement is ambiguous, or if the settlement is silent on a particular point, it will be open to a Court or Arbitrator to examine the nature of the demands that were settled, and also the circumstances that led to the settlement. In the present case the settlement is silent i. e. there is no specific provision on the question whether the extra wages mentioned in clause 8 of the standing orders were to continue even after the settlement. Employers strongly rely on the expression 'in lieu of all their existing benefits' appearing in clause 1(b) of the settlement. This expression is quite specific and clear. Thus there would be no doubt that all existing benefits were substituted by the 15 items mentioned in clause 1(b). Clause 1(a) deals with existing basic pay scales, and clause 1(b) deals with other benefits. As pointed out above I am unable to hold that the extra wages mentioned in clause 8 of the standing orders formed part of the existing basic pay scales. I have discussed above the nature of the extra wages, which in my view provide remuneration for the actual work done during the period between 18.00 hours and 07.00 hours the next day. Thus it is in my view clear that these 'extra wages' are in the nature of payment for overtime work, if so, they would not form part of basic pay scale, but they would be in the nature of a benefit. If so, there is no doubt that the items mentioned in clause 1(b) of the settlement dated 2-11-1971 substituted the extra wages mentioned in clause 8 of the standing orders.

30. I must mention here that Annexure C to D. P. Sinha's affidavit shows that the employees did gain by the settlement dated 2-11-1971, the smallest increment in total earnings being Rs. 30/-. Thus it is clear that even if literal interpretation is put upon the terms of the settlement dated 2-11-1971, the employees are not put to a disadvantage which the union could not possibly intend.

31. I must, however, mention one circumstance peculiar to this case. Even after the settlement dated 2-11-1971 was arrived at, the employers did not get the standing orders amended. Thus even to this date clause 8 of the standing orders does remain, and the employers cannot refuse to give effect to that clause until they get clause 8 of the standing orders modified by following proper and necessary procedure. Standing orders merely indicate the

existing service conditions, they do not preclude the employer and the employees in arriving at a settlement, even if that settlement has the effect of modifying the existing standing orders. Thus in the present case the settlement dated 2-11-1971 with agreed interpretations mentioned above, and clause 8 of the standing orders must be reconciled. The only way to do it is to direct that the employees will be entitled to the higher benefit. Thus with effect from 1-1-1972 the employees will be entitled to get payment as per settlement dated 2-11-1971 read with the agreed interpretations mentioned above. According to the employers, the main item that substitutes the extra wages mentioned in clause 8 of the standing orders is the compensatory allowance alias boarding allowance under the settlement dated 2-11-1971. They rely on trip allowance also, but in my view trip allowance is in the nature of an incentive payment. Considering all this, the only way to reconcile the existing standing orders with the settlement dated 2-11-1971 is to direct that if the amount of extra wages mentioned in clause 8 of the standing orders calculated as per settlement dated 23-1-1969 is higher than that of compensatory alias boarding allowance under the settlement dated 2-11-1971, the employees will be entitled to the former i. e. the higher amount. I direct accordingly. This direction shall have effect from 1-1-1972 until the standing orders are duly modified. The arrears under this award, if any, shall be paid within a period of two months from the date of the publication of this award.

32. Award accordingly. No order as to costs.

Sd/-

M. G. CHITALE
Arbitrator

Bombay, 29th March, 1975.

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

P. Noronha, Under Secretary, Industries and Labour.

Revenue Department

Office of the Collector of Goa

Order

No. RB/RVN/17/74/278

Sub: Govt. land termed Baim Borodo, situated at Naneli of Satari assigned under Title No. 2005, dated 31-10-1956 to Shri Bapuna Khan Assam Khan, Valpoi.

Ref: Govt. letter No. RB/LND/168/68 dated 28-3-1969.

The reversion Order No. LND/21, dated 8-6-1965 issued by the Mamlatdar of Satari and ratified by the Collector of Goa under No. LS/Reversion/2, dated 17-4-1967, published in the Government Gazette No. 4, II Series dated 27-4-1967, is hereby cancelled.

P. S. Bhatnagar, Collector of Goa.

Panaji, 3rd April, 1975.

Corrigendum

No. RB/RVN/30/71/285

The date of the Order issued by the Collector of Goa under No. RB/RVN/30/71/201 appearing in the Official Gazette No. 2, II Series dated 10-4-1975 should be read as 7-2-1975 and not 1-3-1975.

P. S. Bhatnagar, Collector of Goa.

Panaji, 21st April, 1975.

Corrigendum

In the Order No. COL/CAB/EST/3/74-53 dated 5th February, 1975 published at page 606 of the Official Gazette No. 48, Series II, dated 27th February, 1975 the name of the Substitute (President) of the Comunidade of Curti should be read as Vitoba Sinai Priolcar instead of Vitola Sinai Priolcar.

P. S. Bhatnagar, Collector and D.C.A.

Public Health Department

Order

No. PHD 56/73/MA/7158

Read: — Govt. Notification No. PHD/56/73/VIP-Panel/ /7158, dated 12-12-73.

Government is pleased to decide further that the V.I.P. Room in the Goa Medical College which is meant for V.I.P's shall also be made available to the members of the public by the Dean, Goa Medical College subject to the following conditions: —

1) The Room must be vacant.

2) There is no other bed general or paying in the Hospital.

3) The case is serious one needing accommodation in the hospital immediately.

4) The room should be vacated immediately if and when required for a V. I. P.

By order and in the name of the Administrator of Goa, Daman and Diu.

P. Noronha, Under Secretary (Health).

Panaji 22nd April, 1975.

Order

No. PHD/1/49/74/EST/8571

Consequent upon his acceptance to the offer of appointment made to him, Government is pleased to appoint Shri S. K. Kulkarni to the post of Assistant Head Occupational Therapist in the Department of Orthopaedics Surgery, Goa Medical College, Panaji with effect from 24-3-75 (F. N.) on the terms and conditions contained in the Government Memorandum of even number dated 12-12-1974.

Shri S. K. Kulkarni has been medically examined and found fit for appointment to the post by the Medical Board, Panaji.

By order and in the name of the Administrator of Goa, Daman and Diu.

P. Noronha, Under Secretary (Health).

Panaji, 22nd April, 1975.

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